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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,698	11/21/2003	Olivier Pinto	979-042	1348

7590 09/09/2005
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EXAMINER

GRAY, JILL M

ART UNIT PAPER NUMBER

1774

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,698

Applicant(s)

PINTO

Examiner

Jill M. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons of record.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasagawa et al, 6,755,995 B1 (Hasagawa) in view of Hall 6,025,422, for reasons of record.

Response to Arguments

5. Applicant's arguments filed June 24, 2005 have been fully considered but they are not persuasive.

Applicants argue that the flame retardant coating is formed of a particular composition and must include a polymer, further arguing that although the polymer itself is not called for, the specific functional group requirements that must be found in the precursor as well as the phosphorus group that must be included in the polymerizable liquid is clearly defined by the claim, and thus amended claim 1 is not vague.

The examiner disagrees. In particular, and as set forth previously, the limitations for the flame retardant coating layer does not distinctly define the metes and bounds of the subject matter defined by the invention.

Applicants argue that the resin referred to in Hasegawa is thermoplastic, such as polyethylene, not a functional cross-linkable resin.

In this concern, the present claims are not clearly drawn to a "functional" cross-linkable resin. While the precursor of the polymer in the flame-retardant layer includes functional groups, the claims do not require that the polymer per se or the flame-retardant coating contain unreacted or pendent functional groups. Accordingly, applicants' claim 1 does not require a functional cross-linkable resin. Moreover, polyethylene is well known in the art as being cross-linkable, and Hasegawa teaches that his polyethylene can be cross-linked.

Applicants argue that Hasagawa does not teach a flame retardant layer disposed over flammable layer, rather, Hasagawa teaches an improved thermoplastic insulator, that is akin to an improvement of the flammable layer of the present invention which may in fact be a PE insulator, and as such, there is not second flame retardant layer in Hasegawa.

In this regard, it is the combined teachings of Hasagawa and Hall that would have provided a suggestion for the application of the flame-retardant coating layer of Hasagawa over a flammable element, as taught by Hall.

Applicants argue that Hasagawa simply teaches a thermopolymer, such as PE or similar polyolefins, but does not disclose a functional cross-linkable resin formed from a polymer having the specific function groups in the precursors recited in the claim.

The examiner disagrees. In particular, Hasagawa teaches that his polymers can contain functional groups, such as acrylates. See column2, lines 41-65. As set forth above, the present claims only require that the precursor to the polymer have functional groups, not the polymer per se.

Applicants argue that the phosphorus of Hasagawa is used as an auxiliary flame-retardant that is simply included into the composition, and is not included as a functional group of the polymer.

In this concern, applicants' claim 1 does not specify that the phosphorus is a functional group of the polymer per se.

Applicants argue that Hall is directed to flame retardant polymer compositions, however, there is nothing in Hall regarding cross-linkable resin as taught by the present invention, nor is there a teaching to include phosphorus as a functional group of a polymer.

In this regard, Hall is relied upon for all that he would have reasonably imparted to one of ordinary skill in the art at the time the invention was made, namely, the application of flame retardant coatings over flammable elements in known cable constructions, and the motivation to add a photoinitiator to the jacketing layer.

Applicants argue that the cited prior art, either alone or in combination with one another do not teach or suggest the present invention as claimed and there is no

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teaching or suggestion in either Hasegawa or Hall that discloses a polymerizable liquid composition also includes at least one phosphorus group.

The examiner disagrees for reason previously stated above.

Accordingly, the examiner's position remains that the combined teachings of Hasagawa and Hall would have rendered obvious the invention as claimed in present claims 1-18.

No claims are allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

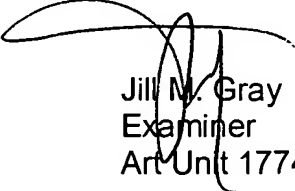
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-Th and alternate Fridays 10:30-7:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jill M. Gray
Examiner
Art Unit 1774

jmg